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In the Matter of

Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

MM Docket No. 87-268

COMMENTS OF CBS INC.

CBS Inc. ("CBS"), by its attorney, hereby submits its comments in response to the Second Report and Order/Further Notice of Proposed Rulemaking, FCC 92-174 ("Further Notice") released in the above proceeding on May 8, 1992, in which the Commission "seeks further comment on [various critical issues] affecting implementation of advanced television service (ATV) in this country."¹

CBS is one of the numerous parties which have participated in the Joint Broadcaster Comments ("Joint Comments") filed today with the Commission in response to the Further Notice. The Joint Comments reflect a wide-ranging consensus within the broadcast industry on most of the issues presented in this proceeding and should be given great weight in the Commission's deliberations. Especially important to meeting the goal of expeditious ATV implementation on a

¹ Notice at ¶1.

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realistic timetable, in CBS's view, are the positions taken in the Joint Comments on allotment/assignment issues, a flexible definition of "simulcasting", and the need to revisit some of the implementation timetable issues as information on the progress of terrestrial broadcast ATV implementation becomes available.

The purpose of these separate comments is to speak briefly to the only issue raised in the Further Notice which is peculiar to network/affiliate ATV implementation

-- the suspension of the "dual network rule," which generally prohibits a network from "maintaining more than one network of television broadcast stations...[unless] such networks are not operated simultaneously, or ... there is no substantial overlap in the territory served by the group of stations comprising each such network."²

The Further Notice proposes to "suspend the dual network prohibition to permit networks to give their affiliates a second feed for ATV".³ CBS agrees with the Commission that "[t]emporary suspension of the ... prohibition would appear to facilitate a smooth transition to ATV."⁴ Indeed, failure to suspend the rule would appear to make it impossible for a

² 47 C.F.R. §73.658(g).

³ Further Notice at ¶19.

⁴ Id.

network to provide programming (simulcast or otherwise) on an interconnected basis for use on the ATV channels assigned to its affiliates. Such a result, of course, would be inconsistent with the underlying purpose of this proceeding "to preserve and improve the existing broadcast service and the benefits that this service delivers to the public."⁵

It need not be reargued here that the network/affiliate distribution system is an important component of that "existing broadcast service" and that the Commission should take no action in this proceeding which would disadvantage or endanger that system.⁶ In these circumstances, CBS believes that suspension of the dual network rule to allow a network to provide service for its affiliates' NTSC and ATV channels is

⁵ Tentative Decision and Further Notice of Inquiry, 3 FCC Rcd 6520, 6537 (1988)

⁶ CBS notes that the Network Affiliated Stations Alliance ("NASA") filed comments on July 15 in support of the petitions for reconsideration of the National Association of Broadcasters, Association for Maximum Service Television, and others, of the 5-year application/construction deadline established in the Second Report and Order/Further Notice of Proposed Rulemaking. NASA urges the Commission to defer the setting of a firm deadline until real-world marketplace information is available because a rigid, premature deadline at this point would create undue and unnecessary hardships for licensees, including network affiliates. Obviously, any Commission policy which weakens affiliated stations weakens the network/affiliate system, and CBS urges the Commission to give great weight to NASA's concern that premature construction deadlines could have that result.

not only appropriate, but is an indispensable feature of the transition to an ATV terrestrial broadcasting system.

The Further Notice also asks "whether the suspension should extend to circumstances where a network's two feeds (ATV and NTSC) go to different licensees in a market," and gives as an example the situation in which "a network's affiliate fails to apply for, to be awarded, or somehow forfeits the right to interim use of, a second ATV conversion channel."⁷ In general, CBS believes that the dual network rule should not be allowed to impede ATV implementation in situations in which a television market would otherwise be without the benefit of network programming on an ATV channel. CBS expects that there will be few instances in which this danger may arise, and we are confident that appropriate relief can be designed to facilitate implementation of ATV network service in those markets either through a broadly conceived suspension of the rule or through a liberal waiver policy.

As with many other ATV-related issues, more will be known about the nature and scope of the problem, if any, as the transition proceeds. At this point, CBS suggests that the Commission state that it will address dual networking issues

⁷ Further Notice at ¶19 and accompanying footnote (emphasis in original).

(beyond the immediate suspension for current affiliates discussed above) as they arise but affirm that it does not intend to apply the dual network rule in the future in any way that will inhibit the transition from a nationwide NTSC networking system to a nationwide ATV networking system.

In the meantime, the Commission should have the benefit of the record in its recently-instituted review of current television regulations which includes a proposal to repeal the dual network rule for all purposes.⁸ CBS believes that compelling arguments can and will be made in that proceeding that the rule is among the many regulations which unduly restrict the operation and growth of television broadcast companies in general, and television network companies in particular, in today's diverse video marketplace.


Thus, the outcome of that concurrent proceeding may well moot the ATV dual networking issues under consideration here. Even if the Commission does not simply repeal the rule in toto, however, and finds some continued viability in dual networking regulation in general, CBS believes that the record developed in the television deregulation proceeding will fully

⁸ Notice of Proposed Rulemaking in the Matter of Review of the Commission's Regulations Governing Television Broadcasting, MM Docket No. 91-221, FCC 92-209, released June 12, 1992 at ¶34.

support the notion that relief from the strict terms of any remaining dual networking rule is justified in the context of the NTSC-ATV transition.

Respectfully submitted,

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